

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of M.D.L.S., M.S.L.S., R.C.L.S.,
R.S.W.L.S., C.T.M.L.S., and R.K.S.L.S., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MICHAEL LEE SIZEMORE,

Respondent-Appellant,

and

WENDY LOU SIZEMORE,

Respondent.

In the Matter of M.D.L.S., M.S.L.S., R.C.L.S.,
R.S.W.L.S., C.T.M.L.S., and R.K.S.L.S., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

WENDY LOU BLACKWELL SIZEMORE,

Respondent-Appellant,

and

MICHAEL LEE SIZEMORE,

Respondent.

UNPUBLISHED
January 17, 2003

No. 240470
Wayne Circuit Court
Family Division
LC No. 00-393514

No. 240496
Wayne Circuit Court
Family Division
LC No. 00-393514

Before: Jansen, P.J., and Hoekstra and Gage, JJ.

PER CURIAM.

Respondents appeal as of right from the trial court order terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(i) and (g). We affirm.

Respondent mother first argues that the trial court erred in admitting and relying on the children's hearsay statements because petitioner's allegations of physical and sexual abuse in the supplemental petition for termination were new and different from the allegations establishing jurisdiction, and legally admissible evidence was therefore required to support the new allegations. MCR 5.974(E)(1). Petitioner sought to admit the evidence supporting the new allegations of physical and sexual abuse through the children's hearsay statements via the tender years exception to the hearsay rule found in MCR 5.972(C)(2). The children's hearsay statements were admissible if the trial court held a tender years hearing and found that the circumstances surrounding the giving of the statements provided adequate indicia of trustworthiness, and that there was sufficient corroborative evidence of the abusive act. MCR 5.972(C)(2); *In re Snyder*, 223 Mich App 85, 91; 566 NW2d 18 (1997).

The trial court erred in failing to hold a tender years hearing and failing to make findings regarding adequate indicia of trustworthiness and sufficient corroboration. *In re Snyder, supra* at 92. The trial court stated that, because it was the trier of fact and would hear all of the evidence, it would not hold a separate tender years hearing, but rather hear all evidence at the termination hearing and separate out what was admissible from what was inadmissible. In its written opinion, the trial court made no findings regarding trustworthiness and corroboration. However, the trial court's findings of fact stated as fact several of the children's hearsay allegations, thus indicating that the trial court found them to be trustworthy and corroborated, although failing to state why it found them to be so.

Because respondents failed to object to the trial court's method of admitting the evidence during the bench trial rather than holding a hearing prior to trial, the issue is unpreserved. *Snyder, supra*. Unpreserved issues are reviewed for plain error that affected substantial rights. MRE 103(a)(1); *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Although plain error occurred, *Snyder, supra*, we cannot say that the error affected respondents' substantial rights. Had the trial court held a tender years hearing in this case, it could properly have found the children's statements to possess indicia of trustworthiness and to have been sufficiently corroborated. The children's statements were repeated to several people, the children had knowledge of sexual activity not expected of children their ages, and they had no motive to lie. The children's fear of and anger toward respondents to an extent not normal in a parent-child relationship corroborated the children's statements. One child's knowledge and performance of oral sex on another child corroborated the fact that she was exposed to an excessive level of sexuality for a five-year-old. That the children did not offer all of the same statements to a stranger who conducted a forensic interview and that respondent mother's family members, who provided foster care for some of the children, may have been biased against respondents and influenced the children, were also considered on review but were outweighed by the indicia of trustworthiness.

Additionally, the trial court did not err in finding that at least one statutory ground for termination was established by clear and convincing evidence. MCR 5.974(I); *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000). The evidence indicated that the children had been exposed to physical abuse and sexual situations beyond their years. Physical abuse, sexual abuse, and neglect were conditions other than respondents' substance abuse and lack of housing, which had led to adjudication, and the trial court should have terminated respondents' parental rights under MCL 712A.19b(3)(c)(ii) instead of (c)(i). However, the statutory ground was established despite the incorrect nomination and respondents had adequate notice of the statutory ground in order to defend against termination under that subsection. See *In re Perry*, 193 Mich App 648, 651; 484 NW2d 768 (1992). Even if termination under that subsection were error, the same evidence of physical abuse and sexual activity clearly and convincingly established MCL 712A.19b(3)(g) as a ground for termination. Although respondents maintained sobriety and complied with the parent-agency agreement, their history of protective services investigations and their failure to improve their parenting after taking parenting classes subsequent to a previous investigation indicated that they will not be able provide proper care and custody or rectify the problems in the family within a reasonable time.

Finally, the trial court did not err in finding that termination was not against the children's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 356-357. The evidence showed that the children were somewhat afraid of respondents and expressed a desire to remain in relative foster care, and that even the eldest child articulated that respondents would have to change significantly before she would want to return to them. Because at least one statutory ground was established, and the evidence on the entire record did not indicate that termination was against the children's best interests, the trial court did not err in terminating respondents' parental rights.

Affirmed.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Hilda R. Gage